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DEPARTMENT OF THE PUBLIC ADVOCATE
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August 10, 2007

Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, ROOM TWB-204
Washington, DC 20554

**Re: Motion of Covad Communications Group, NuVox Communications, Inc.,
and XO Communications, LLC for Expedited Order on Verizon Petition for
Forbearance
WC Docket No. 04-440**

Dear Ms. Dortch:

The New Jersey Division of Rate Counsel ("Rate Counsel") hereby submits its comment on the above matter in accordance with the Public Notice issued on July 30, 2007.¹ For the reasons discussed below, Rate Counsel asks that Federal Communications Commission ("FCC") deny and dismiss the motion.

Covad Communications Group, NuVox Communications, Inc., and XO Communications, LLC ("Joint Petitioners") are essentially asking for reconsideration of the deemed grant now under appeal in U.S. Court of Appeals for the D.C. Circuit. Under FCC's rules, the time to file for reconsideration has expired. In addition, the Joint Petitioners did not seek review of the deemed grant by filing a notice of appeal. Therefore, Joint Petitioners' motion is untimely and should be rejected.

In addition, even if the FCC were to entertain the motion, the FCC could not grant the alternative relief requested by Joint Petitioners. Joint Petitioners seek an order expressly limiting the grant of forbearance to the particular types of broadband services and the Title II regulations specified in Verizon's *ex parte* letter dated February 7, 2006. Rate Counsel has raised below and on appeal various constitutional infirmities that preclude the exercise of such authority by the

^{1/} See Public Notice, DA 07-3473 establishing pleading cycle in this matter with comments due on August 13, 2007 and reply comments due on August 17, 2007.

FCC. The merits of those concerns would have to be addressed before any action could be taken on the alternative relief requested by the Joint Petitioners. At this time any action by the FCC would undercut the rights of the parties to the appeal to have the appeal decided timely. As a result, Rate Counsel submits that the FCC should deny and dismiss the motion.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE

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